

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

MARILYN OYOLA-NÚÑEZ, et al.,

Plaintiffs,

v.

HON. WILLIAM MIRANDA-MARÍN,  
et al.,

Defendants.

Civil No. 08-2149 (JAF)

**OPINION AND ORDER**

Plaintiffs, Marilyn Oyola-Núñez, Myrna Vázquez-Flores, Marisol González-Ramos, Andrea Hernández-Bercedony, and Aida Cruz-Hernández, bring this action pursuant to 42 U.S.C. § 1983 against Defendants the Municipality of Caguas ("Caguas"); William Miranda-Marín, individually and in his official capacity as mayor of Caguas; the Municipality of Aguas Buenas ("Aguas Buenas"); Luis Arroyo-Chiqués, individually and in his official capacity as mayor of Aguas Buenas; the Municipal Alliance of Integrated Services ("AMSI"); Milka Cartagena-Ortiz, individually and in her official capacity as AMSI's Human Resources Director; Joaquín Santiago-Santos, individually and in his official capacity as AMSI's Executive Director; Rafael Matos, individually and in his official capacity as Director of the Aguas Buenas Local Office of AMSI ("Aguas Buenas Office"); and Vilma Valdés, individually and in her official capacity as Interim Director of the Aguas Buenas Office, alleging wrongful termination in violation of the First Amendment of the United States Constitution,

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1 the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-  
2 34, and Puerto Rico law. Document No. 28. They seek reinstatement to  
3 their positions, back pay, and economic and punitive damages. Id.  
4 Defendants move to dismiss pursuant to Federal Rule of Civil  
5 Procedure 12(b)(6). Docket No. 31. Plaintiffs move to strike the  
6 motion to dismiss, but do not oppose. Docket No. 32.

7 I.

8 **Factual and Procedural History**

9 Unless otherwise noted, we derive the following factual summary  
10 from the complaint, Docket No. 28. As we must, we assume all of  
11 Plaintiffs' allegations to be true and make all reasonable inferences  
12 in their favor. Alternative Energy, Inc. v. St. Paul Fire & Marine  
13 Ins., Co., 267 F.3d 30, 36 (1st Cir. 2001).

14 The Workforce Investment Act ("WIA"), 29 U.S.C. §§ 2801-945, was  
15 enacted "to provide workforce investment activities, through  
16 statewide and local workforce investment systems, that increase the  
17 employment, retention, and earnings of participants, and increase  
18 occupational skill attainment by participants and, as a result,  
19 improve the quality of the workforce." § 2811. AMSI and the Mountain  
20 Region Consortium are both consortiums operating under WIA to develop  
21 the workforce in different areas of Puerto Rico. These consortiums  
22 operate local offices in each of the municipalities that make up  
23 their territory. Most of their operating budgets come from the  
24 federal and Commonwealth governments. Until 2008, Aguas Buenas was

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1 affiliated with the Mountain Region Consortium. Caguas is a member of  
2 AMSI.

3 Plaintiffs are five administrative staffers who began working at  
4 the Aguas Buenas Office between 1995 and 2002. They are all active  
5 members of the New Progressive Party ("PNP"), and their party  
6 affiliation was well known in the office. By 2008, Oyola-Núñez,  
7 Vázquez-Flores, Hernández-Bercedony, and Cruz-Hernández ("the ADEA  
8 Plaintiffs") were all over forty years old.

9 On November 2, 2004, Arroyo-Chiqués, a member of the Popular  
10 Democratic Party ("PPD"), was elected mayor of Aguas Buenas. Soon  
11 after taking office, in January 2005, Arroyo-Chiqués decided to  
12 substitute the PNP-affiliated personnel at the Aguas Buenas Office  
13 with people from his party. The Executive Director of the Mountain  
14 Region Consortium opposed this decision, saying that it would expose  
15 the Mountain Region Consortium to anti-discrimination lawsuits.  
16 Arroyo-Chiqués then decided that Aguas Buenas would leave the  
17 Mountain Region Consortium and join AMSI.

18 By July 1, 2008, Aguas Buenas began its transition to joining  
19 AMSI; the process was completed on October 1, 2008. When Plaintiffs  
20 learned that the Aguas Buenas Office would be joining AMSI, they  
21 wrote to Arroyo-Chiqués and expressed their desire to retain their  
22 jobs at the Aguas Buenas Office. On July 1, 2008, Valdés and  
23 Santiago-Santos visited the Aguas Buenas Office, along with several

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1 AMSI employees. Valdés instructed Plaintiffs to explain their duties  
2 to the AMSI employees.

3 Plaintiffs had one-year contracts that had been renewed each  
4 year since the beginning of their employment. Their most recent  
5 contracts expired on July 31, 2008. Plaintiffs' contracts were not  
6 renewed. However, the two PPD-affiliated employees of the Aguas  
7 Buenas Office, who were substantially younger Plaintiffs, had their  
8 employment contracts renewed. The people who replaced Plaintiffs were  
9 PPD sympathizers who were significantly younger than the ADEA  
10 Plaintiffs.

11 Santiago-Santos has nominating authority for appointments in  
12 Aguas Buenas. Arroyo-Chiqués must agree to each appointment decision.  
13 Cartagena-Ortiz makes hiring recommendations, prepares employment  
14 documentation, and ensures that AMSI complies with legal and  
15 regulatory norms related to the appointment process. Arroyo-Chiqués,  
16 Valdés, Santiago-Santos, and Cartagena-Ortiz all knew of Plaintiffs'  
17 desires to remain in their positions at the Aguas Buenas Office. All  
18 Defendants together decided to hire or renew the contracts of the  
19 PPD-affiliated employees while not hiring or renewing the contracts  
20 of Plaintiffs.

21 On October 8, 2008, the ADEA Plaintiffs filed a charge of  
22 discrimination against AMSI before the Equal Employment Opportunity  
23 Commission ("EEOC"), alleging age discrimination in violation of the  
24 ADEA. On December 5, 2008, the EEOC issued them right-to-sue letters.





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1 and never turned in job applications to be hired by AMSI. Docket  
2 No. 31.

3 Under the ADEA, an employer may not "discharge . . . or  
4 otherwise discriminate against any individual with respect to his  
5 compensation, terms, conditions, or privileges of employment, because  
6 of [his] age." 29 U.S.C. § 623(a)(1). The First Amendment protects  
7 non-policymaking public employees from adverse employment actions  
8 based on their non-conforming political opinions. Rutan v. Republican  
9 Party of Ill., 497 U.S. 62, 75-76 (1990); Padilla-García v. Guillermo  
10 Rodríguez, 212 F.3d 69, 74 (1st Cir. 2000). Adverse employment  
11 decisions include dismissal, failure to reappoint or rehire,  
12 demotion, transfer, and reassignment. Rutan, 497 U.S. at 68-70.

13 A plaintiff may have a valid employment discrimination claim  
14 even if she had no contractual or legal property right in her job.  
15 See O'Hare Truck Serv., Inc., v. City of Northlake, 518 U.S. 712,  
16 716-17 (1996); Elrod v. Burns, 427 U.S. 347, 359-60 (1976). The  
17 government may not condition public employment on an employee's  
18 political beliefs. See Elrod, 427 U.S. at 360 n.13. Nor may any  
19 employer take an adverse employment action against an employee who is  
20 over forty years old because of her age, regardless of whether that  
21 employee has a contractual right to her job. Torrech-Hernández v.  
22 Gen. Elec. Co., 519 F.3d 41, 48 (1st Cir. 2008); Andover Newton  
23 Theological Sch., Inc. v. Cont'l Cas. Co., 930 F.2d 89, 94 (1991).

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1           To establish a Title VII claim - and by analogy, any employment  
2           discrimination claim - under a failure-to-hire theory, a plaintiff  
3           must allege that she applied for a vacant position for which she was  
4           qualified, and that she was not hired for the position. See Vélez v.  
5           Janssen Ortho, LLC, 467 F.3d 802, 807 (1st Cir. 2006); see also  
6           Meléndez v. SAP Andina y del Caribe, C.A., 518 F. Supp. 2d 344, 359  
7           (D.P.R. 2007). A plaintiff's general, open-ended request for  
8           employment does not necessarily constitute a job application; rather,  
9           the plaintiff must show that she complied with the employer's  
10          standard application procedures. Vélez, 467 F.3d at 806-07.

11          As non-policymaking public employees, Plaintiffs have the right  
12          to be free from adverse employment actions based on both age and  
13          political affiliation. See 29 U.S.C. § 623(a)(1); Rutan, 497 U.S. at  
14          75-76; Padilla-García, 212 F.3d at 74. Defendants urge us to reject  
15          Plaintiffs' claims for nonrenewal because AMSI was not legally  
16          required to absorb all employees of the Mountain Region Consortium  
17          from the Aguas Buenas office. Docket No. 31. However, Defendants were  
18          not permitted to terminate, refuse to retain or refuse to hire  
19          Plaintiffs simply on the basis of their age or political affiliation.  
20          See Elrod, 427 U.S. at 359-60.

21          Defendants further argue that Plaintiffs have not stated claims  
22          for failure to hire because they do not assert that they submitted  
23          formal job applications to retain their positions or be re-hired by  
24          AMSI. Docket No. 31. Plaintiffs all previously had contracts that had



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1        been continuously renewed for several years prior to July 31, 2008.  
2        They allege they gave notice to Defendants Arroyo-Chiqués, Santiago-  
3        Santos, Valdés, and Cartagena-Ortiz that they wanted to continue  
4        working at the Aguas Buenas Office and that, despite that notice,  
5        they were not re-hired. Without knowing more about the hiring or  
6        contract renewal process, we cannot determine whether Plaintiffs  
7        would typically have been required to submit formal applications to  
8        retain the jobs that they had held for years. Drawing inferences in  
9        favor of Plaintiffs, we find that Plaintiffs' notifications to their  
10       supervisors that they wished to keep their jobs sufficed as job  
11       applications. Cf. Vélez, 467 F.3d at 807 (granting summary judgment  
12       against employee on failure-to-hire claim where plaintiff indicated  
13       interest in, yet failed to submit required application for, transfer  
14       to new position).

15       Accordingly, we reject Defendants' arguments and find that  
16       Plaintiffs have stated claims for political discrimination and/or age  
17       discrimination.

18       **B. Municipal Liability**

19       Defendants argue that Plaintiffs have failed to state claims  
20       against Caguas and Aguas Buenas and against Miranda-Marín and Arroyo  
21       Chiqués in their official capacities as mayors of Caguas and Aguas  
22       Buenas because Plaintiffs have not asserted the existence of an

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1 unconstitutional policy attributable to the municipalities.<sup>2</sup> Docket  
2 No. 31.

3 Municipalities can be liable for constitutional violations  
4 under § 1983 only if the violations occur "pursuant to an official  
5 policy or custom." Welch v. Ciampa, 542 F.3d 927, 941 (1st Cir. 2008)  
6 (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978)).  
7 A plaintiff can demonstrate the existence of an official policy by  
8 showing that her injury was caused by "a formal decision of a  
9 municipal legislative body, or by a person with final policymaking  
10 authority." Id. (citing Owen v. City of Independence, 445 U.S. 622  
11 (1980); City of St. Louis v. Praprotnik, 485 U.S. 112, 123-24 (1988)  
12 (internal citation omitted)).

13 Here, Plaintiffs assert that Arroyo-Chiqués decided to ensure  
14 that all of the personnel at the Aguas Buenas Office were members of  
15 the PPD. When the Mountain Region Consortium expressed its  
16 disapproval, Arroyo-Chiqués decided that Aguas Buenas should leave  
17 the Mountain Region Consortium and join AMSI. Once the transition was  
18 complete, Plaintiffs' contracts were not renewed and they lost their  
19 jobs. As mayor of Aguas Buenas, Arroyo-Chiqués had to agree to  
20 appointments to the Aguas Buenas Office. Plaintiffs have sufficiently  
21 asserted that Arroyo-Chiqués was involved in the alleged wrongful

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<sup>2</sup> Defendants also argue that plaintiffs in a civil rights action must meet a heightened pleading standard to withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Docket No. 31. The First Circuit has held that there is no heightened pleading standard for civil rights actions. Educadores Puertorriqueños en Acción v. Hernández, 367 F.3d 61, 68 (1st Cir. 2004).

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1 termination as a person with final policymaking authority. See  
2 Praprotnik, 485 U.S. at 123-24. Accordingly, municipal liability is  
3 proper against Aguas Buenas. However, Plaintiffs do not allege any  
4 specific actions or decisions by Miranda-Marín as a final policymaker  
5 of Caguas. We, therefore, dismiss the claim against Caguas. We  
6 discuss the claim against Miranda-Marín below.

7 **C. Claims against Arroyo-Chiqués, Miranda-Marín, Santiago-Santos,**  
8 **Cartagena-Ortiz, Matos, and Valdés**

9 Defendants argue that we must dismiss the claims against Arroyo-  
10 Chiqués, Miranda-Marín, Santiago-Santos, Cartagena-Ortiz, Matos, and  
11 Valdés because Plaintiffs have failed to allege sufficient facts  
12 implicating each of them. Docket No. 31.

13 Plaintiffs state that Arroyo-Chiqués decided to ensure that all  
14 of the personnel at the Aguas Buenas Office were members of the PPD,  
15 and determined that Aguas Buenas should leave the Mountain Region  
16 Consortium and join AMSI because the Mountain Consortium would not  
17 permit him to terminate Plaintiffs. They also assert that Santiago-  
18 Santos, as Executive Director of AMSI, had "nominating authority,"  
19 which we assume means the authority to suggest or confirm  
20 appointments. Finally, they state that Cartagena-Ortiz, as AMSI's  
21 Human Resources Director, makes hiring recommendations and has the  
22 duty to ensure that the appointment process complies with legal and  
23 regulatory norms. Plaintiffs have, thus, stated facts implicating  
24 Arroyo-Chiqués, Santiago-Santos, and Cartagena-Ortiz. Their claims  
25 against Miranda-Marín, Matos, and Valdés are more tenuous.

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1 Plaintiffs' only accusations against Valdés are that, on July 1,  
2 2008, she instructed them to explain to AMSI employees how they  
3 performed their duties, and that she was aware that Plaintiffs wished  
4 to continue working at the Aguas Buenas Office. They make no  
5 particular allegations against Matos or Miranda-Marín. However, they  
6 assert that all Defendants, together, discussed and agreed upon the  
7 decision not to renew Plaintiffs' contracts, and did so knowing that  
8 their decision was discriminatory. While Plaintiffs' assertions  
9 regarding Miranda-Marín, Matos, and Valdés are somewhat vague, they  
10 are sufficient to survive a motion to dismiss. See Fed. R. Civ.  
11 P. 8(a). Therefore, we find that Plaintiffs have stated sufficient  
12 facts against all individual defendants.

13 **D. Supplemental Claims**

14 Because we retain Plaintiffs' First Amendment and ADEA claims,  
15 we do not dismiss their claims under Puerto Rico law.

16 **IV.**

17 **Conclusion**

18 In accordance with the foregoing, we **DENY** Plaintiffs' motion to  
19 strike, Docket No. 32, and **GRANT IN PART** Defendant's motion to  
20 dismiss, Docket No. 31. All claims against the Municipality of Caguas  
21 are **DISMISSED WITH PREJUDICE**. All other claims remain.

22 **IT IS SO ORDERED.**

23 San Juan, Puerto Rico, this 5<sup>th</sup> day of May, 2009.

24 s/José Antonio Fusté  
25 JOSE ANTONIO FUSTE  
26 Chief U.S. District Judge